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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2105 OF 2007

Bank of Baroda ..Petitioners.

V/s.

Union of India & Anr. ..Respondents.

Mr.Simil Purohit with Dinesh Parmar for petitioners.

M.R.G.Bhatt for respondent Nos.1 to 3.

Mr.A.H.Halai i/b. Halai & Co. for respondent No.4.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 10TH OCTOBER, 2007.

P.C. :-

Rule. Heard forthwith.

2. Respondent No.3 has served a notice on the Walkeshwar Branch of the petitioners dated 22/8/2006 under section 226(3) of the Income Tax Act, 1961 for the recovery amount set out in the notice. This amount was claimed by the respondent No.3 from the tax defaulter Mr.Amit H. Jhaveri, respondent No.4 herein. Petitioner, it appears though a notice was served did not follow the statutory requirement as contemplated

under section 226(3) of the I.T. Act. The attention of the petitioners was once again drawn by respondent No.3 by notice dated 22/8/2007. In this notice, it was set out that the petitioners are held as deemed to be an assessee in default and called upon to deposit a sum of Rs.7,04,88,000/- immediately and on failure to pay the same within time stipulated, the petitioners were informed that coercive action would be taken against them. As the amount was not paid, a communication dated 28/8/2007 was addressed to the Reserve Bank of India by respondent No.3, calling on the Reserve Bank of India to take action forthwith and furnish the confirmation and credit voucher in respect of the demand made on the petitioners herein. There is one more letter of the same date. Pursuant to this communication the Reserve Bank of India wrote to the petitioner drawing the attention to the notice served by the respondent No.3 under section 226(3) of the I.T. Act. The petitioners were informed that if no advice of vacation of attachment order of Income Tax Department is received by afternoon of August 30, 2007, then the Reserve Bank of India will debit the petitioners' account with DAD by the specified amount and remit the amount to the Income Tax Department.

3. In the meantime, it appears that the

petitioners represented to respondent No.3 that in the event the amounts are due from them, they will pay the same. In view of this undertaking to co-operate in the recovery proceedings, the respondent No.3 withdrew the attachment. Thus, in this context the respondent No.3 informed the petitioners that the notice under section 226(3) is withdrawn with immediate effect. The petitioners thereafter made a representation by annexing the legal opinion on 12/9/2007. The I.T.O. informed the petitioners that the amount of defaulter Mr.Amit H. Jhaveri are lying in the Bank and the bank is liable to the T.R.O. to the extent of their own liability to respondent No.4. The petitioners were, therefore, called upon to pay the amount failing which the dues will be recovered from them and hence the present petition has been filed.

4. We do not propose to enter into the various controversies considering the order to be passed. On the facts of this case, we are of the opinion that an opportunity has to be given to the petitioners herein to file a statement on oath before the respondent No.3 in terms of requirement of section 226(3). Such statement will be filed within 2 weeks from today. On such statement being filed, the respondent No.3 to give hearing to the petitioner and pass orders according to

law within 4 weeks thereafter.

5. If order adverse to the petitioner is passed, the same shall not be acted upon for a period of one week from the communication of the order to the petitioners.

6. Rule is made absolute accordingly with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)